

# PROPOSED LEGISLATION

## The "(Name of State) SOVEREIGNTY DRIVER LICENSE PROTECTION ACT "

**An act to end the use of biometrics for all noncommercial driver licenses and identification cards, to end the retention of Social Security numbers by the agency responsible for driver license issuance and to end or prevent the use of RFID devices for such ID documents.**

Proposed legislation provided by the "Stop REAL ID Coalition"  
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SECTION 1. NEW LAW A new section of law to be codified in the (Appropriate Statutes of State, hereafter "Statutes"), unless there is created a duplication in numbering, reads as follows:

A. This section shall be implemented and in full effect no later than *(This date will depend on the terms of the current driver license contract, typically 12-18 months)*. Any contract with a driver license or identification card vendor shall contain procedures and provide for software necessary to meet the requirements of this section.

B. For the purposes of this section:

1. "Biometric data", "biometric sample" or "biometric template" means, but is not limited to:

a. facial feature pattern characteristics,

- b. a computerized facial image, or a hard copy of a facial image that, when scanned by electronic means, may be used to create a computerized facial image, which exceeds an uncompressed photographic resolution where the width of the head is forty-nine (49) pixels or more of resolution, which corresponds to a maximum full image width of eighty-five (85) pixels or more of resolution, and an image height of one hundred six (106) pixels or more of resolution,
- c. voice data used for comparing live speech with a previously created speech model of the voice of a person,
- d. iris recognition data containing color or texture patterns or codes,
- e. retinal scans, reading through the pupil to measure blood vessels lining the retina,
- f. behavior characteristics of a handwritten signature, such as shape, speed, pressure, pen angle, or sequence,
- g. fingerprints, palm prints, and other methods for measuring or recording ridge pattern or fingertip characteristics,
- h. keystroke dynamics, measuring pressure applied to key pads,
- i. hand geometry, measuring hand characteristics, including the shape and length of fingers, in three dimensions, and
- j. deoxyribonucleic acid (DNA) or ribonucleic acid (RNA);

2. "(Designation for non-commercial driver license, ex. "Class D driver license," hereafter "DL") means an original, renewal, or replacement (DL), a learner permit, or an intermediate (DL) issued by the (Department of Motor Vehicles or other responsible department for driver license or identification card issuance, hereafter "DMV") in accordance with (Statutes);

3. "Identification card" means an original, renewal, or replacement identification card issued by the (DMV) in accordance with (Statutes).

C. Upon the effective date of this act, the (DMV) shall;

1. Cease making biometric comparisons and shall be prohibited from making such comparisons thereafter, regarding the issuance of a (DL) or an identification card; and

2. Cease collecting fingerprint images and shall be prohibited from collecting such images thereafter, regarding the issuance of a (DL) or an identification card (if fingerprint collection applies).

D. The (DMV) shall, on or before the date of implementation of this act;

1. Permanently delete from all active databases, archival, or backup storage databases of the (DMV) any fingerprint images or biometric data, biometric sample or biometric template relating to fingerprint images previously collected, obtained or retained from an applicant for a (DL) or identification card; and (if fingerprint collection applies)

2. Permanently delete from all active databases, archival, or backup storage databases of the (DMV), any Social Security number that was previously collected, obtained or retained from an applicant for a (DL) or identification card

applicant and thereafter, the (DMV) shall be prohibited from retaining the Social Security number of an applicant in any active database longer than seventy-two (72) hours or until such time the Social Security number is disclosed to the Department of Human Services (or other agency responsible for child welfare support enforcement, hereafter "Department of Human Services"); and

3. Render inoperable all software capable of making biometric comparisons, regarding the issuance of a (DL) or identification card, and at such time when the (DMV) enters into any new, renewed or altered contract relating to equipment or computer software used in conjunction with the issuance of a (DL) or identification card, the (DMV) shall permanently remove all existing software capable of making biometric comparisons, even if such software was previously made inoperable. The (DMV) is further prohibited from installing software capable of making such biometric comparisons thereafter. Fingerprint imaging software and related equipment, used exclusively for the collection of fingerprints for hazardous material commercial driver license issuance, shall be excluded from the provisions of this subsection.

E. Any facial image, collected by the (DMV), for the issuance of a (DL) or an identification card, shall be collected and stored in compliance with this section, and:

1. Shall be collected in the format where the facial image collected does not exceed an uncompressed photographic resolution where the width of the head is forty-nine (49) pixels or more of resolution, which corresponds to a

maximum full image width of eighty-five (85) pixels or more and a maximum image height of one hundred and six (106) pixels or more; and

2. In a separate database that is not accessible by any other governmental or nongovernmental entity; and

3. Shall be collected using a white background; and

4. Shall not be collected using a blue background so that the image may be more readily distinguished from facial images collected at a higher resolution; and

5. The (DMV) shall not retain at any time more than one facial image that was collected after the date of implementation of this act, and thereafter, the collection of any facial image for renewal or replacement of a (DL) or identification card shall cause any previous facial image, collected after the date of implementation of this act, to be permanently and immediately deleted. The Department of Public Safety shall allow an applicant to renew or replace a (DL) at any time for the purpose of submitting to the collection of a facial image that complies with the provisions of this section and all appropriate fees and issuance requirements shall be applicable at that time.

F. The provisions of this section shall not be construed to prevent the following:

1. The collection or retention of photographs or fingerprints, including for biometric comparisons, for the purpose of enforcing laws relating to serious traffic offenses including, but not limited to, driving while intoxicated, reckless driving, negligent homicide with the use of a motor vehicle, operating a motor vehicle

after being declared a habitual motor vehicle offender, or any other offense for which a physical custody arrest is required;

2. The collection of fingerprints for the Transportation Security Administration for the purpose of performing criminal record checks required under federal regulations governing the issuance of hazardous materials endorsements on commercial driver licenses and the taking, and retention, of fingerprints for that express purpose;

3. The use, collection, storage or disclosure of a Social Security number relating to a commercial driver license;

4. Requesting and receiving motor vehicle and driver license records or from having legal access to information in the possession of the (DMV) by law enforcement agencies, provided that such access and requests for facial images are specific to individual records and individual persons;

5. The administration of the Sex Offenders Registration Act as it applies to the issuance of a (DL) or identification card;

6. The collection of a facial image, complying to the provisions of this section, by a Driver Examiner, and the transmission of such a facial image to an agent of the (DMV), to ensure that a person who has appeared before a Driver Examiner is the same person who appears before a motor license agency to obtain a driver license or identification card; or

7. The performance of the duties of a motor license agent as required by law. (If state uses motor license agents)

G. The (DMV) shall be prohibited from issuing a (DL) or identification card which utilizes the technology known as "Radio Frequency Identification", "RFID", "Radio Frequency Technology", or "RFT", or similar technologies or devices that are capable of storing and transmitting personally identifiable information or unique numbers, codes, or algorithms which directly correlate to personal information held in another location, database, or device.

SECTION 2. This act shall become effective (date) and implemented by (date).

(NOTE: Sections of this Act require immediate action by the DMV, before the Act is implemented. The Act, and its provisions must be made "effective" as soon as possible, but the DMV must be given time to "implement" the technical and contractual requirements of the Act. Each State must use proper language regarding effective date and implementation date. The DMV should be allowed 4-6 months to fulfill provisions required before implementation and at least 12-18 months for implementation).

## **OTHER LEGISLATIVE CONSIDERATIONS**

There are four items of additional consideration that are vital to this legislation. Since these additional items will probably amend current legislation, unique to each state, these items must be addressed separately from the main body of legislation.

- 1. Cost of Implementation, Fees, Distribution of Fees**
- 2. Social Security Numbers, Selective Service, & Privacy**
- 3. Limiting Access to Records**
- 4. Repeal Specific Laws**

### **1. Cost of Implementation, Fees, Distribution of Fees**

The above legislation is largely based on legislation filed in Oklahoma in 2010. There were many hours of discussions between agencies to arrive at the best, simplest and most acceptable means of funding this legislation. It was decided to raise the cost of every non-commercial driver license and ID card by \$1.00.

The legislation ending the use of biometrics for noncommercial driver licenses and ID cards can be addressed for all persons or as a religious exemption. In both cases, the legislation also requires the removing of Social Security numbers from the DMV database. If a religious exemption is adopted, then the costs are potentially higher since the state may have to create two complete photo systems (high-resolution and low-resolution). Charging an increased fee for just exemption holders could potentially create an economic short fall depending on the number of exemption applicants (an unknown amount). Charging a flat \$1.00 increase for all noncommercial driver licenses and ID cards provides ample funds, in an easily quantifiable amount, that would cover the cost of an exemption or a complete end to biometric ID.



Each state must change existing law to reflect this change in fees, assess how the fees are to be disbursed and how the fees are to be divided between the DMV and the Department of Human Services.

**IT IS EXTREMELY IMPORTANT THIS FEE INCREASE IS INCLUDED IN THE LEGISLATION IN THE APPROPRIATE AREA OF EACH STATE'S LAW. FAILURE TO ADDRESS THE COST OF THIS LEGISLATION WILL SERIOUSLY UNDERMINE THE LEGISLATION'S CHANCES FOR SUCCESS.**

Suggested language below:

“One Dollar (\$1.00) from the (DL) fee shall be deposited to the (DMV) Computer Imaging System Revolving Fund to be disbursed between the (DMV) and the Department of Human Services, as provided for in an interagency agreement, for the purpose of information collection and administration pursuant to (Section and Title of State Law).”

## **2. Social Security Numbers, Selective Service, & Privacy**

- **Driver License Forms**

Regarding the section and title of law dealing with information to be collected for a driver license application, the collection of a Social Security number (SSN) (on paper) should still be allowed. This paper record fulfills the federal requirement for “collection” of a SSN for child support enforcement purposes (Welfare Reform Act) but after the legislation is implemented and the SSN is wiped from DMV databases, the number is separated from facial images. Such separation or decentralization of data is important. Federal laws, like the REAL ID ACT of 2005, seek to provide international data sharing of facial recognition compatible (high-resolution) facial images, and the SSN, found in the same DMV database. If the photos are of a lower resolution and the SSN is removed, then the “prize” of the DMV database is diminished, thus protecting state sovereignty over its rights to issue and control its own driver license system.

The State Department of Human Services will probably create a backup of a SSN provided by the DMV, but will not have access to ALL photos of ALL individuals. This “de-centralization” of data is the best means of protecting personal information from being attacked by federal legislation and yet, the legislation avoids the financial trap of losing highway funds if no SSN is collected. However, a complete repeal of any law requiring the collection of a SSN is best, but most state lawmakers find it difficult to give up the millions of federal dollars tied to the Welfare Reform Act.

- **Selective Service Registration**

About 34 states link driver license issuance to Selective Service registration. This requirement should be repealed since Selective Service registration would require the collection and disclosure of a SSN and such disclosure is made through a network controlled by an international organization (AAMVA – American Association of Motor Vehicle Administrators). AAMVA is the same international organization cited over 60 times in the proposed rules for the REAL ID ACT of 2005. It was their data-sharing network, AAMVAnet, that would have linked state DMV databases with Canada, Mexico and other nations, for the purpose of sharing personal-biometric data, collected by states.

Federal law requires Selective Service registration. States that allow their driver license laws to facilitate federal law implementation give up their sovereignty and control over their own ID system and there is no financial advantage for the state.

An alternative to outright repeal of Selective Service registration is provided below. This alternative, would require “proof” of Selective Service registration rather than registration through the DMV. This language satisfies the concerns of those who want young men to register (or not drive) and yet it protects their SSN from disclosure to AAMVA and retention by the DMV for that purpose.

Alternative suggested language below:

“Every original, renewal, or replacement application for a driver license or identification card made by a male applicant who is a citizen of the United States and at least sixteen (16) but less than eighteen (18) years and thirty (30) days old shall include a statement that by submitting the application, the applicant acknowledges an obligation to register with the Selective Service System and that registration shall occur before receiving a renewal driver license or identification card. A male, that is a citizen of the United States and is at least eighteen (18) years and thirty-one (31) days old but less than twenty-six (26) years old, shall provide a one-time proof of registration, such as a “registration acknowledgement card” in order to receive an original, renewal or replacement driver license or identification card. Upon providing the one-time proof of registration, the Department shall not require proof of registration in the future and shall indicate on the driving record of the applicant that the one-time proof of registration has been provided. The Department shall confirm the name on the proof of registration is that of the applicant, but the Department is prohibited from collecting any additional information from the proof of registration.”

- **Privacy - Mailing Address**

The section and title of law dealing with driver license application requirements should be modified to allow the use of a mailing address on the driver license or ID card. A person choosing a religious exemption, for example, should not be “targeted” because of their choice, and the individual must be allowed to retain some public anonymity. The newer driver licenses include barcodes and magnetic strips and many retailers “swipe” the driver license to gather “all” the data displayed on the document. The acts of demographic profiling and information gathering will undermine privacy and therefore, protections must be in place, i.e. mailing address that differs from physical address.

### 3. Limiting Access to Records

Many state driver license laws were written before most lawmakers could have envisioned global information sharing. As a result, many laws contain loosely written language that cannot protect personal information from “discretionary” powers often granted to the Commissioner or head of the DMV. The potential success of biometrics hinges on total access to such databases to search and identify individuals. It is therefore, extremely important that unlimited access be prevented simply by restricting access to the sharing and disclosure of only one facial image, associated with one name and one record.

Each state must identify state laws that allow for the sharing or potential sharing of facial images, by their DMV.

Below is suggested language to add to the language that authorizes such sharing;

**“In all cases, the use of computerized facial images, by any entity other than the (DMV) and its agents, shall be restricted to one facial image associated with one name and one record per request.”**

### 4. Repeal Specific Laws

If the DMV is empowered, by law, to use biometrics, such as fingerprints or high-resolution facial images and facial recognition, then such laws must be repealed to prevent any conflict with a law that ends the use of biometrics.